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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 574.

THE RESCUE ARMY, a corporation and CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES,

Appellee.

OPENING BRIEF, STATEMENT OF JURISDICTIONAL GROUNDS AND ERRORS TO BE URGED.

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Appellee.

OPENING BRIEF, STATEMENT OF JURISDICTIONAL GROUNDS AND ERRORS TO BE URGED.

The case involves the validity of an Ordinance No. 77,000, entitled "Charities and Relief," incorporated in the Municipal Code of the City of Los Angeles as Sections 44.01 and 44.19, inclusive, and 24.01 thereof against plaintiff's challenge that the same violate all guarantees of the Fourteenth Amendment to the Federal Constitution.

The State Supreme Court upheld the constitutionality of the ordinance as against appellants' claims to the contrary, which claims were: That certain provisions of the ordinance on their face and as applied to appellants deprive them of property without due process of law and are unreasonable, arbitrary and unduly burdensome; that other provisions are arbitrarily discriminatory and deny appel-

lant, and all others similarly situated, the equal protection of said law, in violation of said Fourteenth Amendment to the Federal Constitution; that the ordinance violates the Fourteenth Amendment to said Constitution, in that it creates and constitutes prohibited prior restraints upon the exercise of the right of freedom of religion; that said ordinance unreasonably and arbitrarily classifies the religious activity of soliciting donations of money and goods by religious organizations for their religious activities, as charitable and not religious if any portion thereof is to be dispensed as charity, and it arbitrarily and unreasonably classifies as a promoter any solicitor for a religious organization who receives any compensation for his services and subjects him to many onerous, time-consuming burdens, such as paying a heavy license fee and posting a bond in the sum of $2000.00, not required of other solicitors, thus infringing the rights of freedom of religions, the equal protection of the laws and it takes property without due process of law; that said ordinance penalizes all violations of its provisions and thus violates the rights of personal liberty and religious freedom;

That it delegates to administrative officers the power to arbitrarily refuse to grant a permit or license to solicit to any applicant; and delegates to such officers arbitrary power to endorse and thereby exempt charitable organizations and their solicitors from all of many burdensome, time-consuming requirements of the Ordinance to which appellant and other similar organizations and their solicitors are subjected; that as to such delegations of power and several others of like import no standard is provided to govern such administrative officers in making determinations, and are thus violative of the due process and

equal protection of the law clauses of said Fourteenth Amendment;

That said Ordinance is, and many of its provisions are, unreasonable, unnecessarily burdensome, even if solicitation for charity could be classed as secular, and is thus violative of said due process clause;

In each of the foregoing holdings, the decision of said State Supreme Court denied contentions of appellants to the contrary and decided that such contentions possessed no merit, and appellants, in their petition for rehearing, claimed and now assert that in so holding the decision of said State Court itself has denied to appellants the equal protection of the laws, the right to exercise religious freedom and the right to acquire, possess and dispose of property as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Appellants have claimed and now contend that the sections and provisions of the Ordinance involved, including 44.09 and 44.12 are so related and interdependent that they form a void and unconstitutional plan whose validity must be considered and determined in order that complete or substantial relief be rendered.

The State Court of Last Resort, the Supreme Court of the State of California, affirmed the judgment and decree of the trial court, after denial without opinion of plaintiff's petition by the District Court of Appeal of said State and said Supreme Court held and adjudged that said Sections 44.09 and 44.12 of the Ordinance 77,000 of said City of Los Angeles, and certain other closely related sections of said ordinances are each constitutional and valid and are not violative of the Fourteenth Amendment to the Federal Constitution upon any of the grounds asserted by

petitioners; and in upholding the validity of Section 44.12, which expressly requires every solicitor to "in all respects comply with the provisions of this Article" said decision and judgment upheld the constitutionality of said Ordinance (Article 4, Section 4 of the Ordinance involved), as an entity and each provision thereof as against all challenges on constitutional grounds presented by petitioners.

Concise Statement of the Case.

The action involved was commenced in said District Court of Appeal by the Rescue Army and Charles T. Murdock by a Petition for a Writ of Prohibition to restrain the Municipal Court of the City of Los Angeles from proceeding to try petitioner Murdock for alleged violations of Sections 44.09 and 44.12 of Ordinance Number 77,000 of said City. The respondent court was about to try said cause for the third time, a conviction having been had in each of two previous trials, which in each instance, had been reversed on appeal by the Superior Court of California in and for the County of Los Angeles.

The complaint or petition for said Writ relates the previous trials, convictions and reversals and avers that the Rescue Army is a non-profit incorporated religious organization, of which Murdock is an officer whose official duties occupy his full time, and that one of said duties is soliciting funds from the public to be used in its religious activities, including its charities [T. R. pp. 1, 2]; it is further averred that said Ordinance and Sections 44.09 and 44.12 and other sections thereof are, separately and as a whole, violative of the right of religious freedom of petitioners and of all religious organizations similarly

situated, both on their face, and as construed and applied by said city and by its Department of Social Service, and the Commissioners and Secretary thereof in that said Ordinance and sections create and constitute numerous prior restraints upon the exercise of said right, as guaranteed by the Fourteenth and the First Amendments to the Federal Constitution.

Said petition alleged that "said Sections 44.09 and 44.12 are not, and neither of them is, severable from other sections of said Ordinance, or from the whole body thereof, but are dependent upon and interdependent with other sections of said Ordinance, and derive their pretended legality solely from the fact that they are a part of a purported regulatory law enacted in the exercise of governmental power" [T. R. pp. 3, 4], and said petition contains the following averments:

> "That at all times herein mentioned there was and now is in effect in the City of Los Angeles an ordinance, entitled the 'Charities and Relief' Ordinance, numbered 77,000, a copy of which said ordinance is attached hereto, and made a part of this petition by reference, which said Ordinance purports to and by its provisions does prohibit the exercise of the right of religious freedom by church and other religious organizations through the solicitation of money, or anything of value, or by the sale thereof, for religious purposes except upon the payment of a license tax or fee to said city, and the issuance of a license or permit by said city to so solicit; that said ordinance forbids and penalizes said solicitations by a class of solicitors which it designates as 'Promoters' unless and until said 'Promoters' shall have paid to said city a license tax or fee of $25.00 and have posted a bond in the sum of $2,000.00, and said ordi-

nance likewise requires of another class of solicitors a payment of a license tax or fee and the posting of a bond in the sum of $500.00 with the Board of Social Service Commissioners of said City, and said ordinance further forbids any 'promoter' or other 'solicitor' to solicit without having first obtained a permit or license so to do from the said city, . . ." [T. R. p. 3.]

"That section 44.16 of said Ordinance purports to exempt from the requirements of the payment of said license taxes or fees and the posting of said bonds and the obtaining of said licenses or permits those solicitors whose solicitations are 'purely' for 'evangelical, missionary or religious purposes'; but petitioners aver that said city and its boards, officers and other agents have at all times herein mentioned construed and applied, and now construe and apply said last named provisions to exclude from said exemption all solicitors who do not entirely donate their services and if any portion, however small, of the collections made by said solicitors are to be or are used for charity even though such charity is an essential activity and an integral part of a missionary, evangelical or religious activity of a church or other religious organization, petitioners aver that each, every and all of the provisions described in this paragraph and in paragraph V of this petition is and they all constitute a prior restraint upon the exercise of the right of religion and as such violate Amendments One and Fourteen of the Constitution of the United States.

That said Ordinance as construed and applied by said city, its officers, boards and other agents, classifies all religious activities of churches, religious associations and other religious organizations as charities

and as being for charitable purposes, and thereby subjects said religious organizations to all of the said licensing and permit requirements of said ordinance; that said ordinance provides that said city, through its Department of Social Service may 'approve' such 'charitable associations' as it deems are entitled to such approval and thereby exempt them and their promoters and solicitors from the provisions of said ordinance hereinbefore described and from the necessities of time-consuming delays in investigations and other procedural requirements of said ordinance, and said ordinance, section 44.09 thereof, provides that said Board of Social Service Commissioners may 'express written permission' allow any person to solicit contributions by means of a box or receptacle, upon any street, sidewalk or way, or in any public park, or in any publicly owned or controlled place, although without such 'express written permission,' all persons are forbidden by said section to so solicit as aforesaid." [T. R. pp. 3, 4.]

"Petitioners aver that said last described provision of said section 44.09 and of said provision authorizing said Department of Social Service to approve such charitable association as it deems entitled thereto, arbitrarily grants and permits to be granted privileges and immunities to a portion of a class while denying the same to others and that said provisions authorize the granting of special privileges to certain persons which are not given to others similarly situated, and are thus violative of Article I, section 21 of the Constitution of California and of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution." [T. R. p.].

The defendant court, represented by the City Attorney of said city, filed an answer and also demurred to the petition generally and upon numerous specific grounds and filed "Points and Authorities" containing such argument as to be a brief, in support of the demurrer, in which it is contended among other matters, that the ordinance "constitutes a valid exercise of the police power." "A means of registration of persons engaged in soliciting donations, . . ."; that it "does not confer power, arbitrary or otherwise, upon the Board to deny to anyone the right to solicit for charitable purposes"; that "In so far as it confers power on the Board to waive compliance with certain regulations, such action must be taken in the exercise of a wise discretion"; that "if the exception found in Section 44.16 of the Los Angeles Municipal Code be considered as establishing a religious test and for that reason invalid, such fact does not invalidate the remainder of the Ordinance" and "the Ordinance as thus construed would still come within the limits of control of religious organizations as outlined in the various decisions of the United States Supreme Court." [T. R. pp. 46-50.]

Said argument on behalf of the Municipal Court declares that Sections 44.01 and 44.15 are "regulatory in their nature"; that although nothing in the Ordinance authorizes "the Board to issue or deny a permit to solicit," a refusal "to issue such cards (permits) would be overcome by a Writ of Mandate," and it is asserted that the provisions of Section XVIII pertaining to "promoters" (one class of solicitors) are not shown by the petition to be applicable to either of the plaintiffs, but that such provisions do not "infringe upon religious liberty." [T. R. pp. 45, 49, 50.]

The answer admits the allegations of the petition concerning the prior trials of the criminal case involved and that the said City and its City Attorney and the Municipal Court will proceed to try the case again unless restrained by the process sought; that the City of Los Angeles and its City Attorney claim the right to compel plaintiffs to obey all of the provisions of the Ordinance involved and have threatened to arrest Murdock and all other solicitors of the Rescue Army who solicit contributions of any kind for it, or who otherwise violate provisions of said Ordinance. [T. R. p. 36.]

The answer denies that the Ordinance prohibits the exercise of the right of freedom of religion by religious organizations, except upon payment of a license tax or fee and the issuance of a license or permit by said city; denies that said ordinance requires that the class of solicitors called "promoters" are required to pay a license fee of $25.00 and post a bond of $2,000.00 and to secure a license to be permitted to solicit in the City of Los Angeles; denies that as construed and applied by said City and its Boards and officers, Section 44.16 of the Ordinance and any of the Sections which require of solicitors or promoters a fee or a license tax or furnishing a bond and securing a permit or a license to solicit for religious organizations, constitute prior restraints upon the exercise of the right of religious freedom or violate Amendments One or Fourteen of the Constitution of the United States, and, generally, said Answer denies each and all of the averments of the complaint by which a particular section, or the Ordinance as a whole, are challenged by the petition as violations of the said Fourteenth Amendment or any

of its clauses; the answer also alleges that Sections 44.02 to 44.15 of the Ordinance involved "do not apply to persons who solicit donations which are to be used solely for religious, missionary or evangelical purposes." [T. R. pp. 35, 36.]

The State District Court of Appeal denied the petition without an opinion. [T. R. p. 51.]

Issues as Viewed and Contested on Appeal.

While the petition for the Writ of Prohibition filed by the Rescue Army and Murdock was before the State Supreme Court, the Los Angeles City Attorney, representing the respondent Court, filed a "Demurrer" to the petition and "Points and Authorities," under which latter caption a short brief was written. It begins by stating:

> "The only issues presented by the alternative Writ in the case appears to be whether the Ordinance involved is in contravention of:
>
> (1) XXX
>
> (2) The Fourteenth Amendment to the Federal Constitution." [T. R. pp. 37, 38.]

Thereafter, said short brief attempts to defend Sections 44.01, 44.02, 44.03, 44.05, 44.06, 44.15, 44.16 and 44.18, separately and concludes by arguing that

> "(2) The ordinance constitutes a valid exercise of the police power. It constitutes a means or registration of persons engaged in soliciting donations, and prescribes reasonable regulations governing the conduct of solicitations."

"(3) The ordinance does not confer power, arbitrary or otherwise, upon the Board to deny anyone the right to solicit for charitable purposes, and contends that if Section 44.16 were to be held invalid as establishing a religious test this would not invalidate the remainder of the Ordinance." (Res. Dem. and Pts. and Authorities, pp. 13-20. [T. R. p. 39.]

Petitioners filed a Reply to the foregoing argument in which as to the assertions above mentioned that the Ordinance does not confer power "arbitrary or otherwise" on the Board, and other contentions made in said respondent's brief, it was claimed that said sections must be construed as the petition alleges and in that behalf points out other interrelated sections of said Ordinance which, it is argued, infringe the equal protection of the laws clause of said Fourteenth Amendment, to-wit, Section 44.03, subdivision 2, which authorizes the Board to arbitrarily endorse certain associations, denominated "any social service agency" and to render it scot free of the prior restraints imposed upon all others similarly situated, among the restraints named being compulsion of applying for a permit or license, submitting to unlimited investigations and exhibiting or reading voluminous information cards to those solicited; also the definition of the term "promoter" in Section 44.01 is claimed to create an arbitrary, oppressive and unreasonable class discrimination in that it makes all solicitors subject to classification as promoters by the Board and at the same time empowers the Board to re-

lieve, without restrictive standards, the promoter of an "endorsed" social service agency, of all provisions applicable to other promoters, among which are paying a license fee of $25.00 to solicit and posting of a bond of $2,000. (Jur. Stat. pp. 33-36.]

Petitioners also point out that under said Ordinance, Charles T. Murdock is a promoter as well as a solicitor and is subject to said discriminatory provisions of Section 44.01, and finally said Reply to respondent's answer and brief contends that said city has no power to make any solicitation for a religious purpose or for charity as does Section 44.16 by limiting to "purely evangelical missionary and religious purposes," solicitations which are exempt from the provisions of the Ordinance.

The decisions in *Murdock v. Pennsylvania*, 87 L. Ed. 1292, and *Cantwell v. Connecticut*, 310 U. S. 295, 84 L. Ed. 1213, were relied upon as precedents for holding that the instant ordinance does not establish a mere "registration system" or "identification" safeguard, but is, as a whole, violative of the right to freedom of religion and the equal protection of the laws and void, under the said Fourteenth Amendment. (Jur. Stat. pp. 36-38.)

That the State Supreme Court considered the petition for the Writ of Prohibition as a challenge to the validity of the entire City Ordinance involved is shown by the majority and the dissenting opinions. [28 A. C. 475; T. R. pp. 51-74.]

In the "Statement of Jurisdiction" herein, the above assertion is supported by a concise analysis of salient portions of said opinions. (Stat. of Jur. pp. 29-34.)

It should be especially pointed out that the majority opinion refers to the Court's opinion in *Gospel Army v. City of Los Angeles*, 27 A. C. 248, as giving the grounds upon which, in the instant case, it holds the Ordinance, and the sections thereof herein challenged, as unconstitutional, to be valid and constitutional. [T. R. p. 59.]

Reference to the opinion in *Gaspel Army v. City of Los Angeles*, 27 A. C. 246, shows that the opinion therein considered, construed and passed upon Sections 44.01 to 44.18, inclusive, together, and held that none of them were subject to attack upon the constitutional grounds assigned by the Gospel Army, although special consideration was given to certain sections. These comprise all of the Ordinance except Sections 44.19 relative to "Promoters" and 24.01 regulating Pawn Brokers and Junk Dealers. The opinion in that case does not maintain by number all of the sections in the group 44.01 to 44.18, and among those not so mentioned is 44.09. (27 A. C. 248-253.) Thus, by adopting the first portion of the Gospel Army opinion, the instant opinion upholds as constitutional all of said group of sections. (27 A. C. pp. 248-253.)

Errors Intended to Be Urged.

It is appellants' intention to urge each of the errors set forth in the "Transcript of Record." However, being uncertain as to whether this statement, alone, complies with Rule 27, said assignment, abbreviated where possible, is repeated.

The California Supreme Court in its opinion, decision and judgment in this case, held concerning the validity of the Ordinance involved or sections thereof as hereinafter stated, and thereby erred and violated guarantees of the 14th Amendment to the Federal Constitution, as follows:

I.

The Supreme Court of the State of California erred in its opinion, decision and judgment in the case of *The Rescue Army v. Municipal Court of the City of Los Angeles* in implicitly holding (and in failing to hold to the contrary although the issue was duly presented in the petition and petitioners' briefs) that the "Charities and Relief" ordinance of said city is a valid exercise of the police power and is not, as applied to religious organizations, and especially to said Rescue Army and Charles T. Murdock, violative of the right to exercise freedom of religion, guaranteed by the Fourteenth Amendment to the Federal Constitution, and that it does not arbitrarily and unreasonably, and by its mere fiat, segregate all religious-charitable activities of such organization, from the missionary, evangelical and religious activities of such organization, and that it does not impose upon all religious-charitable activities of such organizations unreasonable, burdensome and time-consuming prior restraints, and that its provisions do not delegate to an

administrative board and its agents power to deny such organizations the exercise of religious freedom without legislative standards to control their decision.

The Supreme Court of the State of California, by its opinion, decision and judgment, erred in holding that Section 44.09(b) [T. R. p. 16], of said Charities and Relief Ordinance of said City of Los Angeles (being Chapter 4, Article 4 of the Municipal Code thereof) is reasonable, valid and constitutional and that it does not violate any clause of the Fourteenth Amendment to the Constitution of the United States, and said opinion, decision and judgment erred in that said Court therein and thereby failed and refused to decide and hold that said section infringes the privileges and immunities, the equal protection of the laws and the due process clauses of said Constitution, in that said section requires that any person who solicits any contribution for any charitable purpose in the public places specified therein, to comply with *all of the other sections of said ordinance*, among which other sections are provisions clearly violative of every guarantee and clause in said Fourteenth Amendment, many of which violations and provisions will be identified and specified in succeeding assignments of error herein.

II.

Said opinion and decision errs in construing said ordinance in that it enacts by judicial legislation a provision not written into any section thereof by the law, reading in substance as follows: The Department is without authority to withhold such information cards when the required information has been filed and payment of four cents for each information card has been made; and said opinion and decision, based in part on such extrane-

ous provision, thereby violates the due process clause of said Fourteenth Amendment and the right of freedom of religion and the exercise thereof by petitioners.

III.

Said opinion and decision errs in construing Section 44.09 of said ordinance in that it adds, by unwarranted judicial legislation, the following provision:

> "The denial of a permit is warranted only if the information furnished the board disclosed fraud, or if the solicitation as planned would interfere with public convenience and safety,"

and said judicial legislation and the opinion and decision based thereon, to-wit that said section, construed as containing said added provision, is a reasonable and valid regulation, is non-discriminatory and does not invade the liberties protected by the Fourteenth Amendment to the Federal Constitution, constitutes an infringement of the right of freedom of religion and a violation of due process of law guaranteed by said Fourteenth Amendment; and it is further assigned as error and as violative of said constitutional provisions in that said Court failed and refused to hold that said section, without or with said added provision, is unreasonable, that it empowers said board to arbitrarily and capriciously and without guide or standard deny permission to solicit for charitable or religious organizations and to discriminate between applicants for permits and between the causes for which solicitations are planned, in violation of all clauses and provisions of said Fourteenth Amendment.

IV.

Appellant will argue that the said Supreme Court erred in its opinion, decision and judgment in holding, by referring to said opinion *The Gospel Army* case, that the provisions of said Section 44.02 of said ordinance [T. R. p. 12], which authorize said board to "recall every such information card and amend or correct the same" and require the person who files it, or association on whose behalf the Notice of Intention was filed, to return said card and to present the recalled information card within 48 hours after receiving notice to return it, are reasonable and valid and not burdensome, and said Supreme Court erred in failing and refusing to hold that said provisions are unreasonably time-consuming and burdensome and infringe the rights of solicitors of donations and associations on whose behalf such solicitations are made to the exercise of the right of freedom of religion and constitute prior restraints upon the exercise of such rights, and of the right to engage in charitable activities, as guaranteed by the Fourteenth Amendment to the Federal Constitution, and in holding that Section 44.02 of said ordinance is reasonable and not burdensome, and is valid in empowering the board to publish the results of investigations by the department pertaining to applications for permits to "solicit" and the allegations of the Notice of Intention and to give publicity to any such results by such means as may be deemed best to reach the general public, and persons interested, and said opinion, decision and judgment erred in failing and refusing to hold that said provisions permit unreasonable delays and constitute prohibitive burdens upon the exercise of religious and charitable activities and the freedom of religion and the right to be charitable, in contravention of the due process clause of the Federal Constitution.

V.

The said Supreme Court erred in its opinion, decision and judgment in said case in holding valid and constitutional the provision in Section 44.03 of said ordinance [T. R. p. 13], which provides that in issuing an information card (permit to solicit) said department has power to show in said card that such issuance is "not an endorsement" or to state that "they endorse such charitable association," and said Supreme Court erred in failing and refusing to hold that said provision is a nullity on the ground that it delegates to the department power to endorse or refuse to endorse, arbitrarily and capriciously, since no reasonable standard is provided to guide and control its decision, thus violating the due process clause of the Federal Constitution: also on the ground that said enactment creates two classes of permits and of charitable associations, the endorsed and the unendorsed, and arbitrarily and unreasonably denies to the latter the privileges and protection which it grants to the former, in violation of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution.

Also, appellant will contend that said Court erred in holding valid and constitutional the provisions of said ordinance in Section 44.03 thereof, which provides that upon the filing of a Notice of Intention (petition for permit) to solicit with said department, before acting on said petition, said department is authorized to investigate the allegations of said petition, or Notice of Intention, and to "have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is to be made," and said Supreme Court so erred, as aforesaid, in failing and refusing to hold that each and all of said actions so author-

ized to be taken by said department are unreasonable and constitute arbitrary and onerous limitations upon the right to solicit for charity, and are prior restraints upon the exercise of the right of freedom of religion, and contravene the Fourteenth Amendment to the Federal Constitution upon both of these grounds.

VI.

Said Supreme Court erred in its opinion, decision and judgment in said case in holding valid the provision in Section 44.03 of said ordinance which authorizes the said department, in issuing to an applicant for a permit to solicit, called therein an Information Card, to set forth therein information secured by independent investigation concerning the applicant, of which he has not been apprized or had opportunity to refute or explain which "in the opinion of the Board" shall be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made," and said Court erred in its opinion, decision and judgment in failing and refusing to hold that said provision is not void and does not violate the due process clause of the Federal Constitution for each of the following reasons:

1. That it empowers the defendants Board and Department to deprive the applicant of a property right and property without due process of law;

2. It provides no guide or standard by which said Board and said Department shall determine what information will be of assistance to the public to determine the nature and worthiness of the charitable purpose for which the solicitation is to be made;

3. It constitutes an unreasonable and burdensome previous restraint upon the exercise of the right to solicit for charitable purposes;

4. As applied to solicitations which are an integral part and in furtherance of the purely religious activities of a religious organization, and as applied to the Rescue Army and its solicitors and to said Murdock, it constitutes a prohibitive prior restraint upon the exercise of the right of freedom of religion.

VII.

That said Supreme Court erred in holding to be valid, and not violative of the right of religious freedom or of the right to engage in charitable activities the provisions of Section 44.05 of said ordinance [T. R. p. 13], which provide as follows:

> "No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:
>
> "(a) The purpose of the solicitation and use of the contribution to be solicited;
>
> "(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commission or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(k) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

VIII.

The said Supreme Court erred in holding, by referring to the decision in *The Gospel Army* case, adequate and valid, the provision contained in Section 44.06 [T. R. p. 15], of said ordinance, which empowers said Department to decide that a Notice of Intention (petition for permit) "does not disclose sufficient information for the public concerning the facts required by Section 44.05 to be set forth or concerning the person or association making such solicitation or on whose behalf such solicitation is made," and said Supreme Court also erred in failing and refusing to hold that said provision is void and violates the Fourteenth Amendment to the Federal Constitution, in that it empowers the Department to act and decide capriciously and arbitrarily and unreasonably, and provides no basis or standard to control the decision involved in said provision;

And appellant will claim said Supreme Court erred in holding, by referring to said Gospel Army opinion and by upholding Section 44.12 [T. R. p. 15], as valid and violative of no constitutional right, that all of the provisions of Section 44.06 of said ordinance are valid and not burdensome, which provisions require that the applicant for permission to solicit "must file with the Notice of Intention a statement of any agreement made with any agent, solicitor, promoter . . . of such solicitation, together with a copy of each agreement, which may be in writing, and, if a change is made in such agreement, applicant must within twenty-four hours file a true copy of it with the Department, and must, if requested by the Department, provide any further information which the Board may require, and, if required by the Department, the Notice of Inten-

tion and additional information must be signed by the person intending to make such solicitation and by two officers of the association."

Said Court erred in failing and refusing to hold that said provisions are violative of the Fourteenth Amendment to the Federal Constitution and of the right of those who seek to engage in charitable or religious activities, because said provisions each create and constitute a burdensome bar and previous restraint upon the exercise of such persons to freely engage in both or either of said activities.

IX.

That said Supreme Court erred in holding that the provisions of Section 44.12 of said ordinance are reasonable, valid and constitutional and not burdensome, as applied to solicitors for charity, whether the solicitation be for charity alone or for charity in furtherance of religion, which provisions require that all solicitors must read the Information Card to any person solicited for donations or present it to such person and "allow him sufficient opportunity to read the same before accepting any contributions so solicited," and said Supreme Court erred in said opinion and decision in failing and refusing to hold that said provisions are so burdensome as to be prohibitive of solicitations, and are arbitrary and unreasonable prior restraints upon the exercise of the right of freedom of religion, and especially of the exercise of said right by the Rescue Army and all of its solicitors, and of their rights to engage in charitable activities, and, hence, that said provisions contravene the Fourteenth Amendment to the Federal Constitution.

X.

The said Supreme Court erred in holding that the provisions of Section 44.14 [T. R. p. 17], of said ordinance are not burdensome and are reasonable, valid and constitutional, which provisions require that solicitors file with the Department a report to said Department, stating the contributions secured, "in detail, all expenses of or connected with such solicitation," "exactly," for what uses and the manner in which all contributions were disbursed, and that the statement be signed by the persons or association obligated to file the Notice of Intention, and said Supreme Court erred in not holding and in refusing to hold that each of said requirements is burdensome and unreasonable, and a prior restraint upon the freedom of religion of the Rescue Army and its solicitors and creates and constitutes a prohibited prior restraint upon the exercise of the right of religious freedom and the right to be charitable of said parties.

XI.

The said Supreme Court erred in its opinion, decision and judgment, in holding Section 44.09(b) [T. R. p. 16], to be valid. Said opinion holds that the provisions in respect to receipts to be given for donations and the contents thereof contained in Section 44.15 [T. R. p. 18], of said ordinance are not unduly burdensome and violative of the right of freedom of religion, and that they are reasonable, valid and constitutional; said pertinent provisions are:

> "No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind

of the contribution, substantially the following matters:

"(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

"(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

"(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

XII.

Appellant will argue that said Supreme Court erred in holding to be reasonable, valid and constitutional the provision contained in Section 44.16 of said ordinance [T. R. p. 19], which segregates solicitations for charitable purposes from solicitations for evangelical, missionary or religious purposes and severs from the latter class all solicitations whose purposes are not purely evangelistic, missionary or religious, even though they are in furtherance and an integral part of religion and other religious activities, and said Supreme Court, in its opinion, decision and judgment erred in failing and refusing to hold that said provision is arbitrary, unreasonable and discriminatory, in that it attempts by law to remove activities which in fact are religious from the realm of religion and from the protection of the Fourteenth Amendment to the Federal Constitution and its guaranty of freedom of religion; and said Court erred in upholding as valid, constitutional, and not burdensome, unreasonable, or arbitrary, the

provisions of Section 44.16 of said ordinance which authorizes the Board of Social Service Commissioners of said defendant City to investigate the matter of solicitations for solely evangelical, missionary or religious purposes and if "in the opinion of the Board" such solicitation is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts in the case"; and said Court erred in failing and refusing to hold that the last foregoing provision is not a direct violation of the right of freedom of religion and of its exercise, and that it does not permit and create a prior restraint upon and interference with the exercise of said right in violation of said Fourteenth Amendment.

XIII.

That said Court erred in holding that said Section 44.16 does not violate the rights of religious freedom and the right of property, guaranteed by said Fourteenth Amendment, of religious organizations, and especially such rights of the Rescue Army and of its solicitors and solicitor-promoters, in that it excludes from the exemption solicitations of money and goods if any part thereof is to be applied to charities incident to religious activities or to the compensation and support of the solicitor, in that said section of the ordinance provides that solicitations "*made solely for evangelical, missionary or religious purposes*" are exempt from all other provisions of

the ordinance which are challenged herein as violative of petitioners' rights, and by this provision the Rescue Army and any of its solicitors or its solicitor-promoters, who seek donations for charity are thereby also arbitrarily denied the equal protection of the laws under said Fourteenth Amendment, and said Court, erred in holding that said last-named provision does not vest in the Board unbridled power to arbitrarily and partially nullify the efforts of solicitors and promoters for religious purposes and organizations and to thereby infringe the rights of religious freedom and the acquirement of property in violation of said Fourteenth Amendment, of promoters and other solicitors for such organizations and purposes, and especially, such rights of the Rescue Army and of its promoters and other solicitors.

XIV.

Said Supreme Court in this case, erred in holding that provisions in Section 44.19(2)(a), (b) and (c) [T. R. p. 20], and subsection 3, are not burdensome and do not constitute prior restraints, and are reasonable, valid and constitutional. Said provisions are:

> "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without a license from the Board so to do.
>
> "(2) Application.
>
> "To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application the applicant shall set forth, in addition to such information as may be required by the Board:

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the application, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation, that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation;

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter."

Subsection (3) requires the applicant to post a bond in the sum of $2000.00, to insure payment of any "direct pecuniary loss sustained through any theft on the part of the principal."

XV.

That said Supreme Court erred in upholding Section 44.19, subsection (4) [T. R. p. 21], which requires the applicant for a promoter's license to pay a fee of $25.00 to said Board of Social Service Commissioners, and subsection (5) authorizes said Board to make such further investigation of the applicant and of "his affairs" as the "Board may deem advisable," and "if from such examination the Board shall be satisfied that the applicant is of good character

and reputation," has "sufficient financial responsibility to carry out obligations incident to any solicitation such as applicant may make," that his statements in his application "are true," etc., the application shall be granted. "Otherwise, the Board shall refuse to issue the license," and said Supreme Court erred in adjudging that the foregoing provisions are valid and constitutional and are not burdensome but are reasonable as applied to promoter-solicitors for charities and for religious organizations, donations to which are used in furtherance of their religious activities and especially to said Rescue Army and its promoter-solicitor.

XVI.

Said Supreme Court erred in holding that the provision of Section 44.19(3) [T. R. p. 21], which empowers the Board to make such investigation of the applicant and "his affairs" "as they deem advisable" and from such examination to base their determination of his qualifications to be granted a license, is reasonable and not vague in its delegation of powers and standards for their use and it erred in failing and refusing to hold and adjudge that said provision is not violative of due process under the Fourteenth Amendment to the Federal Constitution because it fixes no standard and authorizes said Board to make its decision upon matters wholly irrelevant to the purpose of the inquiry and to discriminate against some and favor others.

XVII.

Subdivision 5 of Section 44.19 [T. R. p. 22], provides that the Board may examine the application and investigate the application and investigate the applicant and his affairs as the Board deems advisable and shall issue a li-

cense "to solicit as a promoter" contributions within said city if the Board is satisfied that the applicant is of good character and reputation and has sufficient financial responsibility to carry out the obligations incident to any solicitation to be made as such promoter, etc., and appellant will argue that said Court erred in holding that said provisions can be made to apply to a solicitor of donations for a religious organization, which donations are to be used and are used in furtherance of the religious activities of said organization, including its charities, without being an infringement of the said Fourteenth Amendment and the right of freedom of religion and the inhibitions therein against prior restraints upon the exercise thereof.

XVIII.

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the provision in Section 44.01 [T. R. p. 10], of said Ordinance which states: "No person who is a *bona fide* paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners of the City of Los Angeles shall be considered a promoter within the meaning of this article" is a reasonable classification and in holding that it is valid and constitutional, since said provision arbitrarily, capriciously and unreasonably exempts employees and officers of endorsed agencies from the necessity of securing permits and licenses to solicit, and from all of the burdensome and time-consuming requirements under which other solicitors and promoters are compelled to solicit, and said Supreme Court erred in holding that said exempting provision is not unreasonably discriminatory and does not deny the equal protection of the laws to charitable organizations not endorsed by said

Board and to their solicitors and promoters, in contravention of the Fourteenth Amendment to the Constitution of the United States.

XIX.

Said Court erred in holding that the definition of the term "promoter" in Section 44.01 of said Ordinance and the provisions contained in Section 44.19 thereof pertaining to promoters, do not create and constitute an arbitrary and unreasonable classification of solicitors, and said Court erred in holding that the classification thus provided is reasonable and the standards provided are adequate, and said Court further erred in failing and refusing to hold that, since no substantial difference exists between said definition of "promoters" and the definition of "solicitors" contained in Section 44.01 of said Ordinance, and since the provisions of Section 44.19 concerning promoters require promoters to obtain a "license" and to pay a substantial fee therefor, and to provide a bond of $2,000.00, and to submit to unrestricted investigation by said Board, and the mandate of Section 44.19 by which promoters must file with said Board "such information as may be required," and to submit to denial of a license upon a mere exercise of the Board's whimsy, whereas said requirements do not apply to "solicitors," said definition and classification of promoters as distinguished from other solicitors is arbitrary and unreasonable and denies to promoters and their assistants the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution.

XX.

Appellant will contend that said Supreme Court erred in holding that certain provisions of Sections 44.03, 44.05, 44.06 [T. R. p. 15], and 44.12 [T. R. p. 17], of said Ordinance collectively and read together, are valid, constitutional and reasonable and are not burdensome as applied to secular or religious organizations and their solicitors and promoters who solicit donations of money and articles of personal property for charitable or religious or secular purposes.

Said Section 44.12 provides that the solicitor shall read his information Card "to the person solicited" or "present to said person for his perusal," and allow him "sufficient opportunity to read the same before accepting any contribution."

Since, pursuant to Sections 44.03, 44.05 and 44.06 of said Ordinance, the contents of said Information Card (permit or license), may be of unlimited volume and must, to comply with said last-named section, be so comprehensive as to render the requirements of Section 44.12 prohibitive of public solicitations of donations for money or personal property to be used in furtherance of religion, said Court erred in its opinion, decision and judgment in failing and refusing to hold that each of said provisions, especially all of them together, create a system of procedure which constitutes an unreasonable, burdensome and prohibitive prior restraint upon the exercise by the Rescue Army and its promoter and other solicitors in the rights of religious freedom and the free exercise thereof, and the right to dispense charity and to acquire, possess and dispose of property, as guaranteed by the Fourteenth Amendment of the Federal Constitution.

ARGUMENT.

Before proceeding to discuss the merits of the appeal, in view of certain assertions and contentions set forth in appellee's "Statement of Matter Making Against Jurisdiction" heretofore filed, brief reference will be made to those which it is not deemed necessary to discuss in appellant's reply to said statement.

Both of the Appellants Have Rights Which Are Involved in This Case.

In appellee's above mentioned Statement, it is erroneously asserted that "only the right of Murdock to solicit money upon the streets and public places of Los Angeles" is involved herein.

Appellants contend that property rights of the Rescue Army are involved and that through the attempted enforcement of an ordinance as against their solicitor which violates his right of religious freedom a substantial part of its financial support is threatened with destruction.

Also, if that portion of the State Supreme Court's decision should be upheld in which purported segregation of charities from religion by said Ordinance is held to be valid, or if other provisions which permit the classification of the activities of its solicitor-promoter as non-religious is validated by this Court, the Rescue Army, a corporation, has the same right that any business organization has to challenge the Ordinance and any of its numerous provisions upon any and all other grounds except that the right of freedom of religion and its exercise is thereby infringed.

For example, the Rescue Army has every right to rest its cause upon the ground that certain provisions empower

officers who administer the Ordinance to arbitrarily discriminate against it, or that the provisions themselves deny it the equal protection of the law, or that the Ordinance and its key sections is an unlawful exercise of the police power, which contentions have heretofore been and are now made.

The following points and authorities support the foregoing contention.

The right to acquire property is included in the language of the Fourteenth Amendment which prohibits the deprivation of property without due process of law.

In *Buchanan v. Warley*, 245 U. S. 60, 62 L. Ed. 149, a law was held void under a law by which a negro who contracts to purchase certain property in effect was precluded from doing so.

The opinion cites *Holden v. Hardy*, 169 U. S. 366, 391, 42 L. Ed. 780, 790, as authority for the proposition that "it is elementary"; that the property right "includes the right to acquire, use, and dispose of it.", and Blackstone is cited to the same effect.

The right to dispose of one's property in a given way or under special conditions necessarily involves the right of another to purchase in the same transaction; and every police regulation by law which renders less profitable the business regulated involves the right to acquire property; and if the regulation is arbitrary and unreasonable, makes it violative of the due process clause.

The right to earn a living is a valuable property right, *Theatrical, etc., Operators, etc.*, 176 Cal. App. 692, 118 N. J. Eq. 11, 97 A. L. R. 594.

The right to sell goods at auction is protected by the Fourteenth Amendment. *Sames Loan Co. v. City of Beaumont*, 49 S. W. (2d) 1089 (Tex. Com. App.).

Also, other rights to do a lawful business are so protected: *Lynch v. U. S.* (Ia.), 292 U. S. 571, 78 L. Ed. 490; *Wilmer v. U. S.*, 292 U. S. 571, 78 L. Ed. 1434.

Hence a solicitor for charity who receives compensation has a property right as well as the employer for whose activities he solicits under an employment agreement.

It seems that opposing counsel have failed to probe the depth and to measure the scope of the opinions of the State Supreme Court, or they would not advance so narrow a view of the issues to be decided.

Irrelevant Matter and New Evidence.

Since the case of *Gospel Army v. City of Los Angeles* and the instant proceeding have been linked together by the opinion and decision of the State Supreme Court in this case, and both appeals involve attacks upon the same city ordinance upon ground which in general are common to both, appellants herein desire to point out that appellee's recently filed brief, filed in this Court, in the *Gospel Army* matter, appears to view the hearing in this Court as a specie of trial *de novo*.

On page 2 is set forth purported unsworn statements of evidence concerning the records in the Los Angeles County Clerk's office, upon which an argument is predicated.

On pages 5 and 6 of said appellee's brief is set forth what appears to be an alleged tracing of the ancestry of the ordinance herein involved, the verity of which is nowhere shown in the record of either the *Gospel Army* or the *Rescue Army* as such records now exist.

On page 13, purported records concerning the case of *Ex parte Darte* are referred to and appear in the appendix, of said brief, including an alleged record of a resolution and an order of a city commission.

If it be true as appellees in the *Gospel Army* case aver that the Los Angeles City Charities Commission made an order which "gave rise to *Darte* case," doubtless a similar resolution was passed and order was made out of which the charges against Murdock arose and were tried and retried as the record shows. The record of such order and resolution might well have been recited in the Petition for the Writ of Prohibition in this case, but since it was not set forth therein, appellant's counsel could not properly call that record to this Court's attention even through a sworn affidavit,—much less by way of assertions in a brief.

On page 39 and by "Exhibit B" in the appendix to said brief, wholly irrelevant matters, as far as either appealed case is concerned are injected as new matter and arguments are based thereon, and on pages 40 and 41, more unsworn testimony as to alleged records and matters claimed to be shown appear.

Appellants, the Rescue Army and Charles T. Murdock feel disturbed by the foregoing irregular proceedings by some or all of which counsel who appear for appellees in both cases seek to have the ordinance whose proper interpretation vitally concerns them, construed.

They, therefore, protest against the same being given consideration for any purpose in either appeal, since the same ordinance could hardly be construed differently as affecting appellants herein than in its relation to the Gospel Army case.

Appellants believe that the entire argument on the merits of the issues presented to this Court for decision contained in appellee's "Statement of Matters Making Against Jurisdiction" beginning with "A," page 12, should be stricken, because the same belongs, if anywhere, in the brief for which the rules of this Court provide.

To Uphold the Instant Ordinance the State Supreme Court Has Enacted Law by Judicial Legislation.

The Supreme Court of California has, as the dissenting opinion of Justice Carter asserts, found it necessary to indulge in judicial legislation, in order to save certain provisions of the ordinance from unconstitutionality.

In *People v. Mehra*, 73 Cal. App. 162, page 180, in holding that the words, "same offense", does not mean "same act" or "same transaction," relative to their significance concerning a plea of former jeopardy predicated upon the constitution of California, Justice Plummer forcefully condemned judicial legislation. He said:

> "Courts too frequently fall into the very common error of assuming to interpret everything in the line of legal language. The utter folly and wholesale abuse of construing words that need no interpretation has led to much of the judicial confusion and most of the irreconcilable diversity of court decisions. There can be no stability about law until there is certainty about law, and when the constitution maker or statute maker uses a plain phrase, a simple sentence or a workaday word with a clear, simple and understandable meaning, it is almost criminal in a court to scramble what is simple and confuse what is clear, under the mask of its right to construct."

In varying degrees, this fault is all too prevalent, although it can hardly be likened to criminality, but the obligation of courts to presume that laws are constitutional can easily be magnified to the point of the neglect of a most important judicial function with the never-failing consequence that the protection of fundamental constitutional safeguards which are far more sacred than any law, becomes a lost cause.

It seems that the majority opinion in this case has been swayed by overzeal in an attempt to find a way by which the law may be construed as constitutional.

The majority opinion in the *Gospel Army* decision asserts:

> "The Information Cards, which are in effect permits to solicit, are issued automatically upon the filing of the required information and the payment of the four cents for each card. The department is given no authority to withhold such cards when these requirements are met, and we cannot assume that it will abuse its authority in order to withhold them."

This is purely judicial legislation. Justice Edmonds' dissenting opinion correctly declared:

> "Moreover, the information card which allows one to solicit, providing he presents it to the person who is approached for a donation, 'allowing him sufficient opportunity to read the same, before accepting any contribution. . . .' (Sec. 44.12), is not issued as of course upon the filing of the notice of intention. There is neither requirement nor even suggestion in the ordinance to support Mr. Justice Traynor's assertion that these cards, 'which are in effect permits to solicit, are issued automatically upon the filing of the

required information and the payment of the 4c for each card.' On the contrary, the Department of Social Service shall have the power: '(a) To investigate the allegations of the Notice of Intention, or any statement or reports; (b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made; (c) To investigate at any time the methods of making or conducting any such solicitation. . . . (Sec. 44.03)).'' (27 Cal. (2d) p. 280.)

Of course the Information Cards are not issued automatically, and since the department is expressly empowered to investigate, request further information, etc., etc., *without limit*, and the ordinance contains no provision requiring that upon compliance with designated conditions, the Department shall issue the permit, it necessarily follows that the ordinance, as written and enacted, permits said department to entirely and forever fail to do so, *without abuse of its authority*.

Justice Carter conclusively shows judicial legislation in the Rescue Army majority decision and opinion. This instance concerns the interpretation of ordinance Section 44.09.

Justice Carter quotes the section, which reads:

"Section 44.09. (As amended by Ordinance No. 84,121, approved Feb. 5, 1941.) Solicitation—Boxes—Receptacles:

(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place,

except by the express written permission of the Board.

(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a 'notice of intention' as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article."

Then Justice Carter states:

"The fact that solicitation may be made under section 44.09(a) by express permission of the public officials does not save it. Where a statute is void on its face, such as is true of subdivision (a), the mere fact that an official may give consent to the conduct does not cure it when, as far as appears the discretion of the official is uncontrolled—is guided by no valid signposts and he may act arbitrarily. Nor need a permit be sought under such circumstances as a prerequisite to raising the constitutional question. (See Cantwell v. Connecticut, 310 U. S. 296; Schneider v. State, 308 U. S. 147; Hague v. C. I. O., 307 U. S. 496; Lovell v. Griffin, 303 U. S. 444; Smith v. Cahoon, 283 U. S. 553; *cf.* Cox v. New Hampshire, 312 U. S. 569, 577-578.)" [Tr. pp. 70, 71.]

Again he says:

"The only answer offered by the majority opinion to the lack of a standard for the issuance of permits

is that as a test for the denial of permits there must be either fraud or an interference with the public safety or convenience. There is no mention whatsoever of those tests in section 44.09(a). The board is given unlimited power in passing upon application for a permit. The majority opinion by judicial legislation places those standards in the ordinance. This attempt to unearth vague and uncertain standards *cannot stand in the face of this court's decision in In re Porterfield*, 28 A. C. 102." [T. R. p. 72.]

Section 44.09 of the Instant Ordinance Is Unconstitutional and Void.

Section 44.09 is unconstitutional and void upon each of the grounds which have been assigned as to the ordinance as a whole.

As the Rescue Army majority opinion states, this section was not given "specific" attention in the Gospel Army case opinion. It was held constitutional, however, as one of the group of sections which were considered reasonable, not burdensome or arbitrary. [T. R. p. 64.]

Subdivision (a) of the section provides:

> "No person shall solicit *any* contribution for *any purpose* by means of any box or receptacle, upon any public street, sidewalk, or way, or in any public park or in any publicly owned or controlled place, except by express written permission of the Board." (Emphasis added.) [T. R. p. 16.]

It seems that from the plain, simple language of the provision, complete within itself, and exceptional among the sections of this ordinance in that it makes *no* reference to any other provision therein.

The majority opinion find in it excellent and definite standards, namely, that no application for a permit may be denied unless the use of such permit would create traffic dangers or become a fraud or deception upon the public, in which case, only, a permit might be refused: [T. R. pp. 6, 7, 64, 65.]

This theory is most convincingly negatived by the Dissenting Opinion of Justice Carter in which the conclusion of the majority opinion is termed "judicial legislation." [T. R. p. 72.] He also holds that the section violates the guarantee of the 14th amendment as to due process and freedom of religion. [T. R. pp. 65, 66.]

Certain it is that the language of the provisions on it is too plain to require construction if any words in the English language have attained that quality and degree of perfection.

Violation of Section 44.09 is one of the offenses which were charged against Murdock in the instant complaint the trial of which charge was sought to be prohibited by the petition for the writ. [T. R. p. 59.]

The legislative function of establishing standards by which administrative officers shall enforce laws which it is their duty to administer cannot be delegated to such officers.

Schecter v. U. S., 295, U. S. 404, 79 L. Ed. 1570;

Pomama Ref. Co. v. U. S., 293 U. S. 388, 79 L. Ed. 449;

Yickwo v. Hopkins, 118 U. S. 356.

The majority opinion disposes of appellant's contention that the ordinance is being unconstitutionally applied as to them by saying that the Answer denies the allegations.

of the Complaint to that effect, and that the issue thus presented cannot be determined in this proceeding. [T. R. p. 66.]

However, the State Supreme Court overlooked the admission in the Answer of the truth of the allegations concerning the criminal charges contained in the complaint filed by the City Attorney and the prior trials of said charges. [T. R. p. 59.]

The majority opinion, itself, recites these facts as one consideration warranting the issuance of the alternative Writ, and justifying jurisdiction of the Court; to entertain and determine the issues presented by the petition. [T. R. p. 66.]

It seems, therefore, impossible to say, that is to do so judicially, that the Sections 44.09 and 44.12, have not been construed and applied as alleged in the petition and as contended before the State Supreme Court.

Section 44.12 of the Instant Ordinance Is Unconstitutional.

Appellant Murdock was specifically charged with having violated Section 44.12 by soliciting a donation without exhibiting an Information Card. [T. R. p. 16.]

This is the key provision of the entire ordinance. The tentacles of this section reach forward and backward and grasp every other section, even the Second-hand Store regulations because the woman who conducts it, Mrs. Colbert, is classed by the board as a promoter.

To secure the Information Card, a Notice of Intention must have been filed. [Sec. 44.05; T. R. p. 14.]

The Notice of Intention must provide information on nine matters, of which the dissenting opinion of Justice Carter states: "But a glance at this section shows that the much maligned income tax forms issued by the Federal Government are no more complex and demanding than is this Notice of Intention in its requirements of itemized data." [Gospel Army, T. R. p. 109.] He has analyzed these requirements and reference is made to such analysis for confirmation of his assertion that such requirements "indicate that its enforcement will doubtless effect the disappearance of all but organized institutions," and he might properly have said, all but *commission endorsed* institutions. [Gospel Army, T. R. pp. 109, 110.]

The ramifications of the Notice of Intention reach into data required to be kept by the organization for which the solicitation is made. [Section 44.08, T. R. p. 17.]

Section 44.12 likewise reaches Section 44.06 which authorizes the board to call for further information without limit, beyond that supplied in the Notice of Intention; it reaches Section 44.03 [T. R. p. 13] which empowers the board to make private investigation as to allegations of such notice; it grasps Section 44.02 [T. R. p. 11] which authorizes the board to recall the Information Card, and Section 44.01 [T. R. p. 10] which defines and classifies solicitors and promoters: it is also directly connected with Sections 44.13 [T. R. p. 16], 44.14 [T. R. pp. 16, 18], 44.16 [T. R. p. 19], 44.17 [T. R. p. 19], 44.18 [T. R. p. 19], and 44.19 [T. R. p. 20]. Section 44.16 exempts only solicitations made "solely" for evangelical, missionary or religious purposes, and it exempts the solicitors for such organizations from the burdens of the

same list of sections, if the solicitor represents in each case that the entire amount collected, "without any deductions whatever" shall be turned over to the "named beneficiary." [T. R. p. 18.]

By exempting solicitations "solely" for religious purposes as above stated, it thus excludes the need of the Information Card, but the exemption carries the qualification that if the board is of "the opinion" that the solicitation "is calculated to give the impression" to the person solicited that the purpose is "in whole or in part charitable," the board shall investigate and "give publicity to its findings in such manner as it may deem best to advise the public of the facts of the case."

Section 44.12 is qualified by Section 44.07 [T. R. p. 15], which limits the use of the Information Card; the same is true of Section 44.08 [T. R. p. 16]; it is qualified and restricted by Section 44.10 [T. R. p. 16], which requires filing of formal written permission of the association for which solicitation is made, and Section 44.11 [T. R. p. 16], which adds to such requirements.

Section 44.12 goes forward and in Section 44.14 piles up the burden of detailed reports to the board upon the solicitor who has used the Information Card and upon the association for which solicitation is made; Section 44.15 adds additional burdens as to the use of the Information Card in soliciting, almost as comprehensive as Section 44.05; Sections 44.17 and 44.18 [T. R. p. 19] are minor limitations on the use of the Information Card in

soliciting, and Section 44.19 is tied firmly in line with Section 44.12, since every promoter is made a solicitor. [Section 44.01; T. R. p. 10.]

Section 44.16 leaves appellant and its solicitors subject to Section 44.12, and all others involved with it, but by indirection it becomes the basis for the exclusion of appellant and other similarly situated, from classification as religious organizations, for it exempts from Sections 44.12, 44.02, 44.03, 44.05, 44.06, 44.07, 44.08, 44.09, 44.10, 44.11, no charitable activity and no solicitation, for a "solely" religious purpose if 100% of the donations are not applied to the intended purpose.

Section 44.05 contains provisions which reach back to Section 44.06, and Section 44.06 likewise relates back to 44.03, which depends in part on 44.02, which is qualified by 44.01.

In other words, the simple charge of violating Section 44.12 always involves a violation of 44.15, and usually or may, in any particular case involve a violation of any one or several of the other sections above enumerated.

For example, the defense might be that the thing solicited was for a "purely" religious purpose. (Sec. 44.16); it might be that a permit had been received (44.09); and the prosecution might counter by showing that the permit or Information Card had been revoked or recalled (Sec. 44.01), and so on *ad infinitum*.

Hence, the entire argument which assails the constitutionality of the whole ordinance and at least any of the

sections which immediately connect with or qualify Section 44.12 applies and challenges the validity of this section.

However, in and of itself, Section 44.12 is unreasonable, burdensome, arbitrary and capricious and violates the due process clause of the 14th Amendment.

Therefore in its application to appellant Murdock, Section 44.12 violates his right of freedom of religion and is an unlawful prior restraint upon the exercise thereof.

In respect to appellant Rescue Army it violates the same due process clause in that it deprives said appellant of the right to pursue the occupation of acquiring money and goods and distributing the same, all for charitable purposes—a most useful and beneficial avocation.

Indirectly, it violates the equal protection of the laws clause of said 14th Amendment because the power is given to the Department administering the entire ordinance to discriminate among charitable organizations by endorsing some and not others without the guidance of any definite standard fixed by law, whereas if such a reasonable standard were so created, appellant might comply therewith.

Said last named guarantee of the 14th Amendment is similarly violated by other provisions elsewhere in this brief pointed out. Appellants therefore earnestly contend that Section 44.12 is null and void.

The Instant Ordinance Cannot Be Upheld as a Regulatory Measure Necessitated for the Protection of the Public Against Fraud.

The majority opinion in the instant case, the Supreme Court, states:

> "The ordinance is designed to protect the public from fraud and deception in the solicitation of funds for charity and to provide the public with information from which it may determine the nature and trustworthiness of the charitable purpose for which the collection is made."

The only justification advanced by the majority opinion in the *Gospel Army* opinion is the reason suggested in the above caption. (27 Cal. (2d) at p. 245.)

It seems that Justice Carter's dissenting opinion in the *Gospel Army* case provides a complete and irrefragible refutation of the sufficiency of this ground as a basis for holding the instant ordinance valid as against attack upon the ground that its whole scheme and plan, and especially its key sections, are unreasonable and unnecessarily burdensome, arbitrary and capricious, even as police regulations of a secular business and particularly of so necessary and virtuous a calling as the dispensation of charity. If his view is sound, of course such a law cannot stand where, as in this case, it is made the vehicle through which prior restraints of an unprecedented character are used to shackle the exercise of religious freedom.

Justice Carter quotes from *Schneider v. Irvington*, 308 U. S. 147, 161, 84 L. Ed. 155, as follows:

> "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a mu-

nicipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens. some persons may, while others may not disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on policy authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press."

Again Justice Carter reasons:

"The unreasonable curtailment of this activity merely because some are addicted to fraudulent and deceitful practices in the name of charity, is as unthinkable as would be the dissolution of established institutions merely because dishonesty and corruption have at times been uncovered in their administration. The public as a whole cannot be freed from the entire power of decision as to the worth of the cause for which they are solicited or their inclination to contribute. If the constitutional guarantees are to be upheld, then the public must expect to bear some portion of the burden of seeing that their gifts are made only to worthy and honestly administered causes."

And elsewhere in his dissenting opinion, we read:

"Resort to the penal statutes and usual methods of dealing which this evil is said to afford insufficient protection, in that warm hearted and generous

citizens are especially vulnerable to solicitations made in the name of a religion or charity because of the nature of the appeal and their reluctance to turn a deaf ear to any cry of the poor and needy. Thus a delicate social problem is posed. Which is the more important, to give the public added protection, over that of the penal statutes, against annoyance, inconvenience, and possible fraud, or to preserve intact the cherished right of religious liberty? Should the State essay, at the expense of invasion of a constitutional right, to protect a citizen from his own inclination, or perchance his weakness, in responding to charitable solicitation without due inquiry into the worth of the sponsored cause? Is it not more in keeping with the American tradition to instill in youth and preserve in the thought of the people that individual independence, strength of character, moral stamina, and perception which will enable them to judge personally the good or bad faith of a colporteur or solicitor and the merit of the cause he espouses?

"That some fraud may escape detection is to be anticipated. This is more or less true in all walks of life despite volumes of protective legislation. But the diversion to wrongful channels of some part of the public contribution to charity is not a major catastrophe when weighed against the cost of protection effected only by carving a large slice from the bill of rights." [Gospel Army, T. R. p. 100, *et seq.*]

The language of this Court in the *Schneider* case opinion amply covers the instant Ordinance and this Court apparently regarded the law as so well settled that citation of authorities or precedents would be superfluous.

It will be noted that the same opinion eliminates "public convenience" as a valid reason for enactments which infringe the rights of "charity and religion," for it is said:

> "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institution."

The Entire Scheme, Plan and Purpose of the Ordinance Contravenes the 14th Amendment to the Federal Constitution.

Since the appeal herein reached this Court, for the first time, appellees in this case and the companion appeal, *Gospel Army v. City of Los Angeles*, have raised questions as to asserted narrowness of the issues and the positions of appellants as excluding them from the right to be heard in this Court.

To refute such contentions and to show that throughout these litigations and at all stages, especially as presented to the State Court of last resort, the validity and constitutionality if the entire Ordinance involved has been challenged by one side and defended by he other, and that said Court considered and determined these appeals on that basis, there is included in the Jurisdictional Statements such excerpts and statements of the contents from briefs and opinions of the State Supreme Court as counsel for appellees deemed sufficient. (Jur. Stat. pp. 17-57.) Also all opinions are set forth in the Transcript of the Record. [T. R. p. 51, *et seq.*]

In appellants' brief and the dissenting opinions of the Supreme Court, the principal provisions of the Ordinance are closely analysed, although this procedure was not followed in the majority opinions.

Because the inclusions of these opinions in the Record is required, it is assumed that they are regarded as valuable aids to this Court and it is believed that appellant in this case might safely rely entirely upon the dissenting opinions of Justices Carter and Edmonds and a comparison thereof with the majority opinion, in *Gospel Army v. The City of Los Angeles*, 27 Cal. (2d) 232.

It appears that the mere recitals of the restraints and burdens which beset the way of one who would solicit money or goods for a worthy, small, church-sponsored charity cause suffices to create astonishment that such a plan and procedure could have been enacted anywhere in America, under legal advice, in view of the standards provided in *Cantwell v. Connecticut*, 310 U. S. 296; *Murdock v. Pennsylvania*, 319 U. S. 104, and other decisions of this Court.

Let us visualize a *colporteur* or a "mendicant preacher" or a solicitor for a local church being confronted with the following conditions precedent, restraints prior to soliciting, and burdens as he proceeds:

The would-be solicitor appears at the office of the City's Board of Social Service Commissioner and states his errand. Assuming that he is courteously informed how to proceed, he learns that he must prepare and file a "Notice of Intention" to solicit [Section 44.05, T. R. p. 13], and that the same must contain the "complete information," upon "eleven comprehensive phases of the

undertaking" as Justice Carter describes them, which are included in the following items:

1. The purpose of the solicitation and use of the contribution to be solicited;

(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable.

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a

true copy of the original of such resolution by the officer of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation.

This last provision *expressly* bars all who have not attained such a degree of learning as to the controversial terms of the Ordinance that he may abide by them.

The question at once arises, is the purpose of Section 44.05 merely the "identification and registration" of the applicant as appellees have contended?

Assume that said *colporteur,* mendicant preacher or small-church solicitor eventually presents his idea of good and sufficient information as required.

Having, of course, familiarized himself with all provisions of the Ordinance, he will have presented with the "Notice of Intention.", a statement of any agreement between himself and the church or other organization for whose cause he desires to solicit. [Section 44.06; T. R. p. 14.]

Also, the small-church solicitor, or *colporteur* must produce "the written authorization of the organization" he represents. [Sec. 44.10, 44.11, Tr. p. 16.]

The applicant has learned that before he solicits one dime, he must have obtained the Department's permit or license (Sec. 44.12) and that sufficient time will elapse before he may be thusly armed that the following conditions and delays must be contemplated: Pursuant to

Section 44.06, "Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however that the Board, for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or on any association, by at least two officers of such association and shall be open to the inspection of the public."

Also, the Department has power [Section 44.03, T. R. p. 13]:

"(a) To investigate the allegations of Notice of Intention, or any statement or reports;

"(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made";

The applicant must also contemplate that no limit is placed by the ordinance upon either the *number* of requests for information which the Department may make or the time which may be spent in the investigations or the field which the inspection and copying of records, etc., may cover.

Assume that the foregoing procedure has eventually been completed to the satisfaction of the department and

an "Information Card" (permit or license), is about to be issued, and the applicant receives it, with fear and trepidation for he has learned that the Department has power (Section 44.03), to issue it in more than one form, that is,

> "(d) To issue to all solicitors Information Cards which shall show:
>
> (1) That same is issued as information for the public and is not an endorsement;
>
> (2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;
>
> (3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;
>
> (4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made."

The reason for fear and trepidation is apparent. The implication of a plain statement (which as will appear later must be exhibited to everyone who is solicited) that the Information Card *is not an endorsement* by the Department would be most unfavorable to the solicitor's success.

But far more important, under "(4)," above, the Department may see fit to set forth information gained from *any source* and in any volume and which the applicant has had no opportunity to explain or deny which would cause persons solicited to refuse with scorn or in disgust.

However, assume that the solicitor concludes to use his Information Card. He approaches A, intending to ask for a contribution. Following the directions of Section 44.12, he attracts A's attention and either "exhibits" the Information Card and asks that it be perused or starts reading it, and if A permits, reads the document through, and thereafter, and not before, he may accept a contribution, for which he must give a receipt. [Section 44.15, T. R. p. 18.]

In visualizing all that this transaction, which may involve a dollar or a few cents, imports, what Justice Edmonds said, after careful analysis of the sections involved is impressive. It reads:

> "The Information Card which the solicitor must carry with him, and either read to each prospective contributor or present to such person for his perusal, allowing him sufficient time to read it before accepting any donation, may therefore be a sizeable volume of data which in practice, if not in purpose, will effectively block public support of an organization which has a legitimate purpose and against which no criticism justly may be made.
>
> "To meet the demands of the city, the receipt required for each donation must be signed by the solicitor and contain 'in addition to a description of the amount and kind of the contribution, substantially the following matters: (a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made. (b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated. (c) A statement that the Information Card, issued by the

> Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for . . ." (Section 44.15.) "Only by means of a traveling office could a solicitor comply with all of these requirements." (27 Cal. (2d) p. 281.)

Thus it is safe to say that any actual solicitation in compliance with this ordinance might require the attention of the contributor for a period of half an hour or more although he might be willing and desirous of contributing as soon as being informed that some family was in dire distress or of an otherwise needy cause.

Assume that the purpose for which the small church desires contributions of money or goods from the public, is to provide for destitute families in the neighborhood, while attempting to accomplish moral and spiritual purifications, the question arises as to how many would perish before the efforts of the church and its solicitors may be permitted to reach fruition after compliance with such an ordinance.

Surely it must be presumed that the mendicant preacher was dealt out of the picture before taking the first step.

However, the difficulties of our *colporteur* or small-church solicitor have only begun.

In Section 44.16 [T. R. p. 19], it is provided:

> "Provided, however, that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any

such solicitation or the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case."

As Justice Edmonds points out:

"No limitation as to the extent of such an investigation is imposed and no time limit is fixed within which it must be concluded." (27 Cal. (2d) p. 285.) [Gospel Army, T. R. pp. 125, 126.]

Obviously the Board is given *carte blanc* with no other standard except its own idea of what may "give the impression" sought to be, removed, to arbitrarily publish any statement to detract from a cause which its members condemn, whether based upon prejudice or any other motive.

Section 44.14 requires that the solicitor make "detailed" reports. It reads:

"Sec. 44.14. Solicitations—Report—Time—Expenses—Uses:

"Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed.

> Every such report shall be made on forms to be furnished by the Department, and signed by the persons or association filing or obligated to file the Notice of Intention and such report, if made by any such association, shall be signed by at least two officers thereof. Provided, that when any such solicitation is made by any such association such report need be filed only by such association and not by an individual solicitor engaged in any such solicitation." [Tr. p. 17.]

How these requirements can be harmonized with the rights of the *colporteur* or the mendicant preacher or the concept of the permitted identification and registration system, is difficult to perceive.

Up to the present time, no attempt by court or counsel to do so has been made.

Concerning the provisions of the Ordinance regulating the class of solicitors, called "Promoters," Justice Carter has shown that they are even more restrictive than the provisions which have been considered relating to other solicitors.

His opinion analyses, Section 44.19, and its subsections, which deal with promoters, and he shows that "the comment which" he had made "concerning the unreasonableness of the ordinance provisions relating to solicitors applies with double force to these 'promoter' provisions, and they are also subject to additional criticisms." (27 Cal. (2d) pp. 264-271.) [Gospel Army, T. R. pp. 112-116.]

The following provisions, selected as simple examples, render the entire ordinance violative of the due process clause of the Fourteenth Amendment as contravening the

right of freedom of religion and also as the deprivation of the right to acquire, possess and give away property:

The ordinance requires one who would solicit to obtain a permit from the Department of Social Service as a condition precedent to soliciting. [Sec. 44.05; T. R. p. 13.] This is an unlawful restriction upon the exercise of the right of freedom of religion. (*In re Darte*, 172 Cal. 147; *Cantwell v. Connecticut*, 310 U. S. 296.)

The Department is empowered to refuse a permit. The ordinance contains no provision which directs that upon compliance by an applicant with designated requirements an Information Card (permit) shall be issued.

Ten days before the applicant may begin soliciting he must file the Notice of Intention [Sec. 44.05; T. R. p. 13], which is the application for a permit, and the Department may investigate the matter and no time limit is placed on the investigation, and may require additional information without limit as to such requirements. [Sec. 44.03; T. R. p. 13.]

These provisions alone would bar an itinerant preacher or solicitor from serving their calling in Los Angeles, and thus constitute unlawful prior restraints [*Murdock v. Pennsylvania*, 319 U. S. 104], and render the ordinance void because legislative enactments may not, under the guise of the police power, impose unnecessary, unreasonable or unduly burdensome restrictions upon the pursuit of useful activities or of private property.

Washington v. Roberge, 278 U. S. 116;

Holden v. Hardy, 169 U. S. 366;

McKay Jewelers, Inc. v. Bowron, 19 Cal. (2d) 595,

In re Fuller, 15 Cal. (2d) 425;

Skalko v. City of Sunnyvale, 14 Cal. (2d) 213;

Ex parte Dickey, 144 Cal. 234.

In that behalf Justice Carter's opinion, *supra*, shows that the definition of the term "Promoter" provided in Section 44.01, includes "any person who for a pecuniary compensation solicits for another," hence, the *colporteur* and the churchman who aids in raising funds for activities of his church and who as Justice Carter describes him, is often an "indigent religionist" and is given some remuneration, is a "promoter," and in the instant case, also, appellant Murdock, is made a promoter.

Justice Carter shows that the provisions which require such a solicitor to pay a "license fee" of $25.00; and to post a $2000.00 bond to secure a license are unreasonable and discriminatory when compared with the lack of such requirements as to solicitors not classed as promoters, and that there is "no indication" in the ordinance that the costs of regulation "were fixed in contemplation of reimbursement" to the city for expenses.

He quotes *Murdock v. Pennsylvania*, *supra*, as saying of a similar license fee:

> "It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question," and "But if the formula of this type of Ordinance is approved, a new devise for the suppression of religious minorities will have been found." (27 Cal. (2d) 267, 268.)

Surely, as far as the pernicious character and effect of such devises are concerned and their unreasonable and unconstitutional results are to be considered, it matters not whether the motive which has actuated the enactment is aimed at crushing religious minorities, or avoiding the cost and inconvenience of being the recipient of too numerous requests for donations.

Justice Carter points out that the qualification of "good reputation and character" required for a promoter, as a condition precedent to the exercise of the right of religious liberty is unconstitutional for possession of "good reputation" in the "eyes of a large group, or a majority" cannot be made the test for the exercise of such right, and the "requirement is not a sufficiently fixed and definite standard," in support of which criticisms the *Murdock v. Pennsylvania* and *Cantwell v. Connecticut* opinions are quoted.

Also, said dissenting opinion declares that the terms "unfair, unjust" and "inequitable" as used in Section 44.19 as grounds for the revocation of a promoter's license are "vague and uncertain and may well result in the same religious censorship arising from a determination of good reputation and character," and that Subdivision 8 of Section 44.19, which requires "good moral character" as a prerequisite to issuing a license is subject to the same criticism. [27 Cal. (2d) pp. 270-272; *Gospel Army*, T. R. pp. 117, 118.]

Justice Edmonds expresses like views as to the terms "good reputation and character" and "unfair, unjust, inequitable," as used in Section 44.19, and quotes *Hoyt Bros., Inc. v. Grand Rapids*, 260 Mich. 447, 128 A. L. R. 1363, in which similar terms were held violative of con-

stitutional prohibitions against "deprivation of life, liberty or property without due process of law." [*Gospel Army*, T. R. pp. 134, 135.]

As a summary, the general tenor and design of the ordinance is well expressed by the last named jurist, as follows:

> "Large groups of citizens of every faith and creed are regularly devoting much time and effort, at great personal sacrifice, to the cause of those who are in need. If the work in behalf of the less fortunate among us is done in the name of or in connection with the promulgation of a religious doctrine, then the Los Angeles ordinance authorizes the Department of Social Service to add to the indifference, inertia and self-interest which solicitation must always overcome, either the condemnation or damnation by faint praise of an official bureau which is authorized to reach a conclusion without regard to anything but the personal opinion of some administrative officer as to the worthiness of the purpose. Whatever is done in the name of religion for a charitable purpose, the ordinance declares in effect, is to be viewed with suspicion and distrust. There can be preaching without official intervention, but any practice of Christian virtues is to be carried on only under the watchful eye of the Department of Social Service according to its notion of 'the public interest.' And yet my associates say that such legislation lays no restraint upon religious freedom." [*Gospel Army*, T. R. p. 126.]

Scope of the Review in This Court and Effect of State Supreme Court's Decision.

In Vol. 2, Ohlinger's Federal Practice, page 368, it is said:

> "It is, of course, clear that federal courts do not follow state decisions as to federal rights, whether arising under the constitution, treaties or statutes,"

and it is said that the determination by the Supreme Court of the United States of a federal question

> "is binding upon the State courts, and must be followed, any state law, decision, or rule to the contrary,"

citing *Chesapeake & Ohio R. Co. v. Martin*, 283 U. S. 209, 75 L. Ed. 983.

Also, in the same authority (Vol. 1, pp. 833-840) it is said:

> "The Supreme Court has jurisdiction where the highest court of the state *actually decides* the federal question and places its judgment thereon even though it may not have been raised in the lower court."

It is so held in *Manhattan Life Ins. Co. v. Cohen*, 234 U. S. 123, 58 L. Ed. 1245, and other decisions are cited by Ohlinger as "to the same effect."

Similarly, in *Herndon v. Levy*, 301 U. S. 242, 81 L. Ed. 1066, it was held that in a proper case, when the state court treats the question as having been raised, it will take jurisdiction.

One consideration in deciding whether a substantial federal question is presented is a division of opinion among the members of the State Court.

Louisville & N. R. Co. v. Melton, 218 U. S. 36, 54 L. Ed. 921.

It is stated in the *Gospel Army v. City of Los Angeles* opinion that "the conditions that a social agency must meet to be endorsed by the Social Service Commission and the standards that govern the commission are set forth in a separate Ordinance, the relevant part of which is quoted in the margin."

Among the parts of said ordinance which are thus quoted are the following:

> "(a) That the title to any property in the City of Los Angeles owned by such charitable corporation or association is vested in the name or names of said charity, if it be a corporation, or else in the name or names of a responsible trustee, or trustees under a declaration of trust or other written instrument, setting forth the rights of such charitable corporation or association therein, and recorded in the Records of the County Recorder of Los Angeles County."
>
> "(d) provides that 'not more than 15% of any amounts collected by solicitation has not been paid "for expenses of solicitation."'
>
> "(h) provides that 'employes of such corporations' must be 'persons of good moral character and reputation' and that the association has used reasonable care in selecting persons of good moral character and experience as solicitors for its funds." [*Gospel Army*, Tr. pp. 89, 90.]

Justice Carter's dissenting opinion contends that as applied to a solicitor or promoter for charities the requirement that they be of "good reputation" is unreasonable and that the factor of reputation is "not an issue" in a reasonable registration or identification ordinance. He shows that this requirement might well exclude from use-

fulness and their right to in this way exercise their freedom of religion, merely on the basis of official religions or prejudice. [*Gospel Army*, T. R, pp. 117-120.]

Also, the provision of this separate ordinance which makes it essential that any organization seeking endorsement pay not to exceed 15% of the amount collected for the services of solicitors is grossly unreasonable, unduly burdensome, and in practice is highly discriminatory.

A most convincing exposition of this thesis is contained in *Ex Parte Darte*, 172 Cal. 47.

Justice Hinshaw says:

> "Again, let us illustrate. Re-Commission: 'The Municipal Charities Commission is delegated power to indorse (which means grant permits to charitable institutions under which alone they are entitled to live) such charitable institutions as meet the actual needs of the community, attain a reasonable standard of efficiency, and are so conducted as to insure the public in the wise use of funds.' This language taken from the first of the ordinances above quoted, sounds reasonable. But as interpreted by the Municipal Charities Commission, what does it mean? In their own language it is this: Such a charity is 'one that will execute every trust for charity with the least possible deduction for expense.' Here is a mark set, and that mark is the absolute perfection of human endeavor. No tolerance, no charity, is shown by this Commission of Charities, for any human effort, however self-sacrificing and efficient, that does not attain human perfection. Charities in Los Angeles must reach a pitch of perfection unattained by any other human institution, or in the view of the Municipal Charities Commission they are unfit to live."

In the foregoing, the opinion considers charity without regard to religion and *apropos* the same subject, but referring to the "religious aspects," the opinion reads:

> "And it will be found better in the long run that the free exercise of religion be preserved in its integrity, better for the nation, better for charity itself which owes so much to religion, even if the efficiency of religious charities be not up to the standard of perfection set by the Municipal Charities Commission. If, under that standard, seventy-five cents of every dollar would go to the objects of charity, while under the less efficient methods in vogue but fifty cents of each dollar actually reaches the beneficiaries, it is not to be forgotten that there will be many millions fewer of these dollars to be distributed in charity if the activities of the religious are hampered, thwarted, and stayed."

One of the ordinances of the City of Los Angeles whose invalidity was declared in the *Darte* case, also delegated the power of endorsement of charitable organizations to the "Charities Commission" of that era, and that commission demanded as a condition precedent to endorsement that the Salvation Army deed its local property to a "local board of managers, or trustees."

This apparently was the "last straw" among numerous demands made, which the Army felt that it could not deliver.

After stating that certain safeguards to protect the public from charlatans and imposters might be provided for reasonable regulation of charities (which are not applied to religious charities by the opinion), it is said:

> "But this falls far short of the law under review, which permits such charitable work to be carried on

only by * * * trustees satisfactory to the municipality."

The instant provision above quoted also goes far beyond the bounds of reasonable regulation in impliedly requiring that a charitable organization have property vested in its name, or that it be placed in the name of a responsible trustee.

Hence appellants contend that the instant ordinance upon whose assumed validity the majority opinions in the *Gospel Army* and *Rescue Army* cases justifies the provisions of the instant ordinance empowering the Department to endorse, and to thus exempt certain charitable organizations from all burdensome and discriminatory provisions, is, itself burdensome, unreasonable and arbitrary and violative of the 14th Amendment and of each of its guarantees.

Upon all of the grounds heretofore presented appellants seek reversal of the judgment of State Supreme Court.

Respectfully submitted,

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